IN THE

Supreme Court of the United States

OCTOBER TERM, 1926.

No. 292.

CARRIE BUCK, BY R. G. SHELTON, HER GUARDIAN AND NEXT FRIEND, PLAINTIFF IN ERROR,

v.

J. H. BELL, SUPERINTENDENT OF THE STATE COLONY FOR EPILEPTICS AND FEEBLE-MINDED, DEFENDANT IN ERROR.

BRIEF FOR PLAINTIFF IN ERROR.

I. P. WHITEHEAD,
Attorney for Plaintiff in Error.

J. P. BELL COMPANY, INC., PRINTERS, LYNCHBURG, VIRGINIA

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In Error to the Supreme Court of Appeals of Virginia.

BRIEF FOR PLAINTIFF IN ERROR.

JURISDICTIONAL FACTS.

The judgment to be reviewed by this Honorable Court was rendered by the Supreme Court of Appeals of Virginia on the 12th day of November, 1925. (R. 108.)

In the lower Court the plaintiff in error contended that the Act of Assembly of Virginia, approved March 20, 1924 (Acts 1924, Chap. 394, p. 569), printed in full in the Appendix hereto, and under which this case arose, abridged the privileges and immunities of this plaintiff and other persons similarly situated as guaranteed by the Constitution of the United States, because said Act of Assembly does not provide due process of law; it denies to this plaintiff and other inmates of the State Colony for Epileptics and Feeble-Minded the equal protection of the laws and imposes a cruel and unusual punishment (R. 111). The Supreme Court of Appeals of Virginia sustained the constitutionality of said Act of Assembly, holding that said Act was a lawful exercise of the police power of the State; that it provided for a hearing before judgment; was based upon a reasonable classification; was not a penal statute and did not impose punishment and was a valid enactment under State and Federal constitutions. The opinion of the Court,

delivered November 12, 1925, has not been reported in the official volumes of Virginia Reports, but is a part of this record. (R. 98).

On January 27th, 1926, a writ of error was awarded to the judgment of the Supreme Court of Appeals of Virginia to this Honorable Court under the provisions of Section 237 Judicial Code (R. 109).

Statement of the Case.

On January 23rd, 1924, Carrie Buck, the plaintiff in error, was adjudged to be feeble-minded within the meaning of the Virginia statutes (R. 18) and committed to the State Colony for Epileptics and Feeble-Minded (R. 19); that under authority of said Act of Assembly, approved March 20th, 1924, Acts 1924, p. 569 (Appendix), the Special Board of Directors of the State Colony for Epileptics and Feeble-Minded, on the 10th day of September, 1924, entered an order directing that Carrie Buck be sexually sterilized by means of a surgical operation known as salpingectomy (R. 27). On October 3rd, 1924, Carrie Buck, by R. G. Shelton, her guardian and next friend, appealed from the order of the said Special Board of Directors to the Circuit Court of Amherst County (R. 7) and said appeal was heard on November 18th, 1924.

The evidence taken at this trial shows that there are several grades of feeble-minded persons, ranging from low grade imbeciles with mentalities of four years up to high grade morons with mentalities of fourteen to fifteen years (R. 95); that there are eight to ten thousand such feeble-minded people in Virginia (R. 94), with about seventy-five to one hundred confined in State institutions who should be sterilized (R. 93); that by segregation in State institutions these people are effectually prevented from propagating (R. 95); that salpingectomy is a surgical operation involving the opening of the abdominal cavity of a female on both sides and the cutting and tieing back of the severed ends of the Fallopian tubes; that vasectomy is the operation for males and consists of cutting and tieing the severed ends of the tube running up from the testicles (R. 68); both operations are reasonably safe in the hands of a skilled surgeon (R. 68). The operation if suc-

cessfully performed has no ill effects on the general health of the patient (R. 69), nor does it abate sexual desire or in any way interfere with sexual gratification. All it does is to prevent reproduction (R. 68).

Carrie Buck is perfectly healthy physically (R. 97); was eighteen years old at the time of the trial with a mental age of nine years, a "middle grade moron" (R. 91). She has no criminal record and was a good worker in the home of Mrs. Dobbs with whom she lived until she became pregnant and was taken in custody by the State authorities and committed to the State Colony for Epileptics and Feeble-Minded.

On April 13th, 1925, the Circuit Court of Amherst County rendered a judgment affirming the order of the said Special Board of Directors and ordered Dr. J. H. Bell, Superintendent, to perform upon Carrie Buck the operation of salpingectomy (R. 3).

On June 8th, 1925, a writ of error and supersedeas was awarded to said judgment, by the Supreme Court of Appeals of Virginia. The case was heard in the said Supreme Court of Appeals and on November 12th, 1925, the said Court handed down its opinion sustaining the constitutionality of the said Act of Assembly (R. 98), and entered judgment affirming the judgment of the Circuit Court of Amherst County (R. 108), from which judgment a writ of error and supersedeas was allowed to this Honorable Court (R. 109).

Errors to be Urged.

The Supreme Court of Appeals of Virginia erred in deciding that the Act of Assembly of Virginia, approved March 20th, 1924, Acts of Assembly 1924, page 569 (Appendix), did not abridge the privileges and immunities of this plaintiff and other inmates of the State Colony for Epileptics and Feeble-Minded as guaranteed by the Fourteenth Amendment of the Constitution of the United States; holding:

(a) That said Act of Assembly did afford this plaintiff due process of law.

(b) That said Act of Assembly did not deny to this plaintiff and other inmates of said Colony the equal protection of the laws.

Argument.

The question before this Honorable Court is one of law, i. e., whether the said Act of Assembly (Appendix) is a valid exercise of the police power of the State and therefore a valid enactment under the Constitution of the United States. There is no assignment of error to any part of the evidence and reference thereto is made only for the purpose of enabling the Court to fully understand the nature of the case before it.

The Supreme Court of Appeals of Virginia by its decision in this case (R. 108) declared that in the exercise of its police power the State of Virginia may enact and enforce laws providing for surgical operations upon certain persons in its custody, purely eugenical in their effect. It is not pretended that the Act of Assembly under consideration was adopted as a health measure. The operation authorized, if successfully performed, does not affect the health of the person operated upon for good or bad. Neither is it a moral measure. The nature of the patient is not changed; sexual desire is not abated nor sexual gratification interfered with. The sole effect of the operation is to prevent procreation by rendering the patient sterile. In short, it is a eugenical measure and nothing more.

Police Power.

The police power of the State has been said to be a law of necessity which was not surrendered by the States when they entered into the American Union, and that under this power a state may enact reasonable laws to promote the health, morals and general public good. This is a great power and far-reaching. Nevertheless, the Constitution of the United States is the supreme law of the land and whenever the police power of the State conflicts with the Constitution, the police power must give way. Therefore, the State cannot under the guise of a police regulation take into custody its unfortunate but unoffending citizens and over their protest subject them to surgical operation in violation of rights guaranteed by the Constitution of the United States; one of which rights is the inherent right to go through life with full bodily integrity, possessed of all those powers and faculties with which

God has endowed them. The right to bodily integrity existed before either State or Federal Constitution was adopted and is as old as Anglo-Saxon civilization.

Eugenic Laws and Regulations, Ancient and Modern.

Eugenics is not a new subject. The idea of selective breeding is as old as recorded history.

Plato in his Ideal Republic, Book 3, Chap. 17, says:

> "You will establish then in your state the science of medicine * * * and along with it a corresponding system of judicature, both of which together may carefully provide for such of your citizens as are naturally well disposed both in body and mind; while as regards the opposite, such as are diseased in their bodies, they should let die, but as for those who are thoroughly evil and incurable as to the soul, these they are themselves to put to death."

The historian Diodorus Siculus in Book 2, Chap. 4, speaking of the eugenic laws of Ceylon, says:

> "Those that are lame or have any other weakness or infirmity are put to death."

The same author gives the following reason why the "Troglodites" were all of strong bodies. He says:

> "All the Troglodites are circumcised like the Egyptians, except those who by reason of some accident are called cripples; for those only, of all those that inhabit these straights, have from their infancy that member (which in others is only circumcised) wholly cut off with a razor." Book 3, Chap. 2.

The Twelve Tables of Rome Law 3, Table 4, provided:

> "If a father has a child born, which is monstrously deformed, let him kill him immediately."

Even in enlightened Greece, Archidamus seems to have run counter to the Spartan breeding idea for he was fined for having married a diminutive wife.

So in modern America the "science of medicine" has taken up the ancient idea of selective breeding and laws have been enacted providing for surgical operations to prevent the reproduction of the so-called socially inadequate. But in each instance with the exception of the Virginia Act, such of these laws as were purely eugenical in their effect have been declared by the Courts to be unconstitutional and void because they infringed upon certain human rights and liberties protected by either State or Federal Constitution.

A brief review of these cases will be helpful before taking up the discussion under appropriate Points.

In New Jersey an act authorizing the sterilization of certain defectives confined in State institutions, by means of surgical operation, for the purpose of preventing procreation, was declared unconstitutional as denying to the complaining party the "equal protection of the laws" guaranteed by the Fourteenth Amendment of the Constitution of the United States. *Smith* v. *Board of Examiners,* 85 N. J. Law 46.

In *Haynes* v. *Lapeer,* 201 Mich. 138, the Michigan sterilization law was declared unconstitutional for the same reason.

In the more recent case of *Smith* v. *Command,* decided by the Supreme Court of Michigan on June 18th, 1925, not yet reported in the official reports but appearing in 204 N. W. page 140, this principle was reaffirmed as to Sec. 7 (sub-division 2) of Public Acts 1923, No. 285.

In *Davis* v. *Berry,* 216 Fed. 413, the Iowa sterilization law was declared unconstitutional as a bill of attainder providing for cruel and unusual punishment and not providing due process of law.

In *Feilins* case, 70 Wash. 65, the Court held that the Washington statute providing for vasectomy as a part of the punishment for a certain crime was not repugnant to the constitutional prohibition against cruel and unusual punishment. The controlling principle in Feilins case was quite different from the case at bar. The Washington statue was a penal law and the operation of vasectomy was imposed as a part of the punishment for the crime committed. The Virginia law is not punitive but is a eugenical measure. The plaintiff in error here has been convicted of no

crime and the right of the State to take her into custody and sexually sterilize her by means of the surgical operation of salpingectomy is based solely upon grounds that she is of defective mentality and is of child-bearing age.

If as is claimed by the advocates of sterilization, feeble-mindedness is hereditary and its evil effects so far-reaching that the state must in the interest of the general public good stamp it out at any cost, then it is submitted this end must be accomplished by some measure which does not violate the constitutional rights of citizens.

Point One.

The Act of Assembly of Virginia (Appendix) Does Not Provide Due Process of Law Guaranteed by the Fourteenth Amendment of the Constitution of the United States.

The plaintiff in error contends that the operation of salpingectomy as provided for in said Act of Assembly is illegal in that it violates her constitutional right of bodily integrity and is therefore repugnant to the due process of law clause of said Fourteenth Amendment.

In *Munn* v. *Illinois,* 94 U. S. 143, this Court in passing upon the due process clause of the Fourteenth Amendment of the Constitution, defined the meaning of the term "deprivation of life" thereby forbidden, said:

> "The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The deprivation not only of life but whatever God has given to everyone with life * * * is protected by the provision in question."

The operation of salpingectomy clearly comes within the definition. It is a surgical operation consisting of the opening of the abdominal cavity and the cutting of the Fallopian tubes with the result that sterility is produced.

It is true the Act of Assembly (Appendix) does provide for a hearing before the sterilization operation can be performed and that hearing may be in a court of law in case of appeal, but this fact standing alone does not meet the constitutional requirement

of due process of law. In determining whether the constitutional requirement has been observed we must look to the substance rather than the form of the law. *Chicago R. Co.* v. *Chicago,* 166 U. S. 226, *Simmons* v. *Craft,* 182 U. S. 427; for form of the procedure cannot convert the process used into due process of law, if the result is to illegally deprive a citizen of some constitutional right. *Chicago R. Co.* v. *Chicago, supra.* Neither can the State make a proceeding due process of law by declaring it to be such. If this was not so, there would be no restraint upon the power of the Legislature. *Murry* v. *Hoboken L. & I. Co.,* 18 How. 272, *Hurtado* v. *California, &c.,* 110 U. S. 516. The cases cited in the opinion of the Supreme Court of Appeals of Virginia (R. 98), to sustain its finding that said Act of Assembly does provide due process of law, are all cases dealing with lawful proceedings. The Virginia Court quotes with approval from the opinion of Justice Matthews in *Hurtado* v. *California, supra,* as follows:

> "It follows that any legal proceedings enforced by public authority, whether sanctioned by age and custom or newly devised in the discretion of the legislative power, in the furtherance of the general public good, which regards and preserves these principles of liberty and justice, must be held to be due process of law."

We do not controvert the proposition of law as here stated. But if as the plaintiff in error contends, the result of the proceeding under the Virginia Act is illegal, in that it violates her bodily integrity and is a deprivation of her life and liberty, then the above cited case may with propriety be quoted in support of the contention that said Act of Assembly does not provide due process of law. For as is laid down in this decision, the test of due process of law is that the proceedings shall be legal, preserving the liberty of the citizen.

The inherent right of mankind to go through life without mutilation of organs of generations needs no constitutional declaration. That right existed long before the Constitution was framed; was not lost or surrendered to legislative control when the government was created and is beyond the reach of the State

agency known as the police power. Therefore any law or proceedings, such as is had under the Virginia statute, which trespasses upon this inherent right of bodily integrity, is illegal, and being illegal is a denial to the injured citizen of the due process of law guaranteed by the Fourteenth Amendment of the Constitution of the United States.

Point Two.

The Act of Assembly of Virginia (Appendix) Denies to the Plaintiff and Other Inmates of the State Colony for Epileptics and Feeble-Minded the Equal Protection of the Law Guaranteed by the Fourteenth Amendment to the Constitution of the United States.

The provisions of the Act of Assembly of Virginia (Appendix) as its title clearly indicates are applicable only to those mentally defective persons who are confined in State institutions. It does not apply to any person of this class who is not so confined in a State institution. The fact that there are many thousand more of this class in Virginia at large than in the custodial care of the State is admitted. (R. 94.)

If the said Virginia Act of Assembly were otherwise a legal, constitutional enactment, it is respectfully submitted that it violates the equality clause of the Fourteenth Amendment of the Constitution of the United States in that while the avowed purpose of the law is to stamp out the so-called evil of feeble-mindedness, this law is made to apply to only a portion of those so afflicted.

That the State may enact laws which by reason of peculiar circumstances affect some persons or class of persons only is not denied, but "the mere fact of classification is not sufficient to relieve a statute of the reach of the equality clause of the Fourteenth Amendment." *Gulf, Colorado R. R. Co.* v. *Ellis,* 165 U. S. 150; and the classification must be based upon some reasonable grounds in the light of the purpose sought to be attained by the Legislature and must not be an arbitrary selection. *Gulf, Colorado R. R. Co.* v. *Ellis, supra.*

The object of the said Virginia Act of Assembly is to prevent the reproduction of certain mentally defective people, among

them the feeble-minded, and the vice of all such laws as the Virginia Act of Assembly lies in the fact that they do not apply to all of the class to which they are naturally related and which possess a common disability. The common disability of the class under discussion is feeble-mindedness, but as stated above, the Virginia law applies only to a very small portion of the class and that portion less likely to reproduce their kind on account of the restraints under which they live. In this view of the matter it is obvious that the selection under the Virginia statute is a narrow arbitrary one which bears no reasonable relation to the avowed purpose of the law.

The Legislature can fix the class, but having done so it cannot arbitrarily divide it into two portions and legislate differently for each portion. This rule of law is well stated in 6 Ruling Case Law, Sec. 375, as follows:

> "The legislature cannot take what might be termed a natural class of persons, split this class in two and then arbitrarily designate the dissevered factions of the original unit as two classes and thereupon enact different rules for the government of each."

In support of the text is cited *State* v. *Julow,* 129 Mo. 163, and *State* v. *Walsh,* 136 Mo. 400, and other authorities.

In making classifications in law the true principle requires something more than a designation by which the class may be identified. The characteristics which serve as a basis for classification must be of such a nature as to mark the class so designated as peculiarly requiring exclusive legislation. *Alexander* v. *Elizabeth,* 56 N. J. Law 71. There is nothing to mark the feeble-minded confined in Virginia State institutions as requiring this exclusive legislation. In fact, on the assumption that the State institutions are properly managed, there is no necessity for such legislation, since by segregation in said institutions they are effectually prevented from procreating (R. 95) and to prevent procreation by these people is the object of the sterilization operation provided for in the law.

To meet this well recognized principle of law the Supreme Court of Appeals of Virginia, speaking through Judge West, in its opinion (R. 107) says:

> "The two classes existed before the passage of the sterilization act. The female inmate, unlike the woman on the outside, was already deprived of the power of procreation by segregation."

One would infer from the quoted statement that this plaintiff was contending solely for the right to procreate. No such claim was made in the court below. We concede that the State has the right to segregate the feeble-minded and thereby deprive them of the "power to procreate." The State has exercised this right for a long time without question, but we deny that the state has the right to force this plaintiff, who is at present segregated in the State Colony and "deprived of the power of procreation," to undergo the surgical operation of salpingectomy for the purpose of rendering her sterile. If the purpose of the operation is to prevent procreation, why sterilize one already deprived of that power? Why sterilize the few segregated in State institutions who have no opportunity to procreate and leave beyond the reach of the legislation the eight or ten thousand like people at large in the state propogating their kind at will?

That the class selected under the Virginia law is singularly narrow and arbitrary seems clear.

An excellent statement of the law of classification is found in the opinion of Justice Steere in *Haynes* v. *Lapeer*, 201 Mich. 138. He says:

> "It is elementary that legislation which, in carrying out a public purpose for the common good, is limited by reasonable and justifiable differentiation to a distinct type or class of persons is not for that reason unconstitutional because class legislation, if germane to the object of the enactment, and made uniform in its operation upon all persons of the class to which it naturally applies; but, if it fails to include and effect alike all persons of the same class, and extends immunities or privileges to one portion and denies them to others

of like kind, by unreasonable or arbitrary subclassification, it comes within the constitution prohibition against class legislation."

The recent case of *Smith* v. *Command,* decided by the Supreme Court of Michigan on June 18th, 1925, not yet reported in the official reports but appearing in 204 N. W. 140, arose under Public Acts 1923, No. 285. This law provided for a hearing before a court of law after which the court might make an order for treatment or operation to render the defective incapable of procreation whenever the facts required by Section 7 shall be found. The Court declared sub-division 2 of Section 7 of said Act unconstitutional and void. Sub-division 2 of Section 7 of said Act is as follows:

"2(a) That said defective manifests sexual inclinations which make it probable that he will procreate children unless he be closely confined or be rendered incapable of procreation; and

(b) That he would not be able to support and care for his children if any and such children would probably become public charges by reason of his own mental defectiveness."

The Court said:

"The second division of the classification in section 7 presents a different situation. It brings within the operation of the law only those of the feeble-minded class *who are unable* to support any children they might have, and whose children probably will become public charges by reason thereof. The evident purpose of the Legislature in enacting the second division was to protect the public from being required to support the children of mentally defective persons. In attempting to do so, an element inconsistent with the beneficial purpose of the statute was introduced. It is not germane to the object of the enactment as expressed in its title. It carves a class out of a class. In that it does NOT apply to those of the class who may be financially able to support their children, it is not made applicable alike to all members of the class. We think that it is subject to the constitutional objection dis-

cussed by Justice Steere in *Haynes* v. *Lapeer Circuit Judge*, *supra*, and by Justice Sharpe in *Peninsular Stove* v. *Burton*, 220 Mich. 284, 189 N. W. 880."

In the very able opinion delivered by Mr. Justice Garrison in *Smith* v. *Board of Examiners*, 85 N. J. Law 46, the New Jersey sterilization law was declared repugnant to equality clause of the Fourteenth Amendment of the Constitution. This case is strikingly like the case at bar and we think fully sustains the position of plaintiff in error here. We quote the following from Justice Garrison's opinion:

"Turning our attention now to the classification on which the present statute is based and laying aside criminals and persons confined in penal institutions with which we have no present concern, it will be seen that—as to epileptics with which alone we have to do—the force of the statute falls wholly upon such epileptics as are 'inmates confined in the several charitable institutions in the counties and State.' It must be apparent that the class thus selected is singularly narrow when the broad purpose of the statute and the avowed object sought to be accomplished by it are considered. The objection, however, it not that the class is small as compared with the magnitude of the purpose in view, which is nothing less than the artificial improvement of society at large, but that it is singularly inept for the accomplishment of that purpose in this respect, viz., that if such object requires the sterilization of the class so selected, then fortiori does it require the sterilization of the vastly greater class who are not protected from procreation by their confinement in State or county institutions.

"The broad class to which the legislative remedy is normally applicable is that of epileptics, i. e., all epileptics. * * * For not only will society at large be just as injuriously affected by the procreation of epileptics who are not confined in such institutions as it will be by the procreation of those who are so confined, but the former vastly outnumber the latter and are in the nature of things vastly more exposed to

the temptation and opportunity of procreation, which indeed in the cases of those confined in a presumably well conducted institution is reduced practically to nil.

"The particular vice, therefore, of the present classification is not so much that it creates a sub-division based upon no reasonable basis, as that having thereby arbitrarily created two classes, it applies the statutory remedy to that one of those classes to which it has the least, and in no event a sole application, and to which indeed, upon the presumption of the proper management of our public institutions, it has no application at all. When we consider that such statutory scheme necessarily involves a suppression of personal liberty and a possible menace to the life of the individual who must submit to it, it is not asking too much that an artificial regulation of society that involves these constitutional rights of some of its members shall be accomplished, if at all, by a statute that does not deny to the persons injuriously affected the equal protection of the laws guaranteed by the Federal Constitution.

. . . . . .

"The conclusion we have reached is that, without regard to the power of the State to subject its citizens to surgical operations that shall render procreation by them impossible, the present statute is invalid in that it denies to the prosecutrix of this writ the equal protection of the laws to which under the Constitution of the United States she is entitled."

Smith v. *Board of Examiners, supra.*

In an endeavor to differentiate the rule of law which controlled the decision in *Smith* v. *Board of Examiners, supra,* and the case at bar, the Supreme Court of Appeals of Virginia said:

> "The right to sterilize did not as in Virginia depend upon whether the welfare of the patient would be promoted by the operation" (R. 108) by protecting "the class of socially inadequate persons from themselves." (R. 104.)

The operation authorized under the New Jersey law was salpingectomy, the same as in Virginia, and its results are undoubtedly

the same. The situation of the prosecutrix of the writ in New Jersey and the plaintiff in error here are identical—both confined in State institutions. The only difference in the cases is that one was an epileptic and the other a feeble-minded person.

With all due deference to the learned Judge who delivered the opinion in the case under review, we submit his reasoning is not sound. If by the last quoted clause is meant protection against procreation, we respectfully ask what more protection is needed. They are already segregated in State institutions which effectually prevent them from procreating. (R. 95.)

But there is no merit in this feature of the Virginia law. The fact of the welfare of the patient being promoted by the operation, is not susceptible of definite proof. At best, it is a mere guess. It seems obvious then that this idea of benefit to the patient was written into the Virginia law for the sole purpose of enabling any court which might favor the selective breeding idea to find some ground upon which to base an opinion upholding the constitutionality of the Act.

In the light of the admitted fact, that by segregation in a state institution this plaintiff in error and others of her class so confined are already deprived of the power to procreate, and that there are vast numbers of the same class at large in the State procreating and propogating their kind, it seems clear that the Virginia law in limiting the surgical operation to those feeble-minded people confined in State institutions arbitrarily carved a class out of a natural class and applied the statutory remedy to that one of those classes to which it has the least application; certainly not the sole application.

It is respectfully submitted that the Act of Assembly (Appendix) denies to this plaintiff in error the equal protection of the laws guaranteed to her by the Fourteenth Amendment to the Constitution of the United States.

Danger of Legislation of this Character.

If the Virginia Act of Assembly under consideration is held to be a valid enactment, then the limits of the power of the state (which in the end is nothing more than the faction in control of

the government) to rid itself of those citizens deemed undesirable according to its standards by means of surgical sterilization have not been set. We will have "established in the state the science of medicine and a corresponding system of judicature." A reign of doctors will be inaugurated and in the name of science new classes will be added, even races may be brought within the scope of such a regulation and the worst forms of tyranny practiced. In the place of the constitutional government of the fathers we will have set up Plato's Republic.

Respectfully submitted,

CARRIE BUCK,
By R. G. SHELTON, her guardian
and next friend,
Plaintiff in Error.

By I. P. WHITEHEAD,
Attorney of Record.

APPENDIX.

Chap. 394—An Act to provide for the sexual sterilization of inmates of State institutions in certain cases. (S. B. 281.)

APPROVED MARCH 20, 1924.

Whereas, both the health of the individual patient and the welfare of society may be promoted in certain cases by the sterilization of mental defectives under careful safeguard and by competent and conscientious authority, and

Whereas, such sterilization may be effected in males by the operation of vasectomy and in females by the operation of salpingectomy, both of which said operations may be performed without serious pain or substantial danger to the life of the patient, and

Whereas, the Commonwealth has in custodial care and is supporting in various State institutions many defective persons who if now discharged or paroled would likely become by the propogation of their kind a menace to society, but who if incapable of procreating might properly and safely be discharged or paroled and become self-supporting with benefit both to themselves and to society, and

Whereas, human experience has demonstrated that heredity plays an important part in the transmission of insanity, idiocy, imbecility, epilepsy and crime, now, therefore

1. Be it enacted by the general assembly of Virginia, That whenever the superintendent of the Western State Hospital, or of the Eastern State Hospital, or of the Southwestern State Hospital, or of the Central State Hospital, or of the State Colony for Epileptics and Feeble-Minded, shall be of opinion that it is for the best interests of the patients and of society that any inmate of the institution under his care should be sexually sterilized, such superintendent is hereby authorized to perform, or cause to be

performed by some capable physician or surgeon, the operation of sterilization on any such patient confined in such institution afflicted with hereditary forms of insanity that are recurrent, idiocy, imbecility, feeble-mindedness or epilepsy; provided that such superintendent shall have first complied with the requirements of this act.

2. Such superintendent shall first present to the special board of directors of his hospital or colony a petition stating the facts of the case and the grounds of his opinion, verified by his affidavit to the best of his knowledge and belief, and praying that an order may be entered by said board requiring him to perform or to have performed by some competent physician to be designated by him in his said petition or by said board in its order, upon the inmate of his institution named in such petition, the operation of vasectomy if upon a male and of salpingectomy if upon a female.

A copy of said petition must be served upon the inmate together with a notice in writing designating the time and place in the said institution, not less than thirty days before the presentation of such petition to said special board of directors when and where said board may hear and act upon such petition.

A copy of said petition and notice shall also be so served upon the legal guardian or committee of the said inmate if such guardian or committee be known to the said superintendent, and if there be no such guardian or committee or none such be known to the said superintendent, then the said superintendent shall apply to the circuit court of the county or city in which his said institution is situated, or to the judge thereof in vacation, who by a proper order entered in the common law order book of the said court shall appoint some suitable person to act as guardian of the said inmate during and for the purposes of proceedings under this act, to defend the rights and interests of the said inmate, and the guardian so appointed shall be paid by the said institution a fee of not exceeding twenty-five dollars as may be determined by the judge of the said court for his services under said appointment and such guardian shall be served likewise with a copy of the aforesaid petition and notice. Such guardian may be removed or dis-

charged at any time by the said court or the judge thereof in vacation and a new guardian appointed and substituted in his place.

If the said inmate be an infant having a living parent or parents whose names and addresses are known to the said superintendent, they or either of them as the case may be shall be served likewise with a copy of the said petition and notice.

After the notice required by this act shall have been so given, the said special board at the time and place named therein, with such reasonable continuances from time to time and from place to place as the said special board may determine, shall proceed to hear and consider the said petition and the evidence offered in support of and against the same, provided that the said special board shall see to it that the said inmate shall have opportunity and leave to attend the said hearings in person if desired by him or if requested by his committee, guardian or parent served with the notice and petition aforesaid.

The said special board may receive and consider as evidence at the said hearing the commitment papers and other records of the said inmate with or in any of the aforesaid named institutions as certified by the superintendent or superintendents thereof, together with such other legal evidence as may be offered by any party to the proceedings.

Any member of the said special board shall have power to administer oaths to any witnesses at such hearing.

Depositions may be taken by any party after due notice and read in evidence if otherwise pertinent.

The said special board shall preserve and keep all record evidence offered at such hearings and shall have reduced to writing in duplicate all oral evidence so heard to be kept with its records.

Any party to the said proceedings shall have the right to be represented by counsel at such hearings.

The said special board may deny the prayer of the said petition or if the said special board shall find that the said inmate is insane, idiotic, imbecile, feeble-minded or epileptic, and by the laws of heredity is the probable potential parent of socially inadequate offspring likewise afflicted, that the said inmate may be sexually sterilized without detriment to his or her general health, and that

the welfare of the inmate and of society will be promoted by such sterilization, the said special board may order the said superintendent to perform or to have performed by some competent physician to be named in such order upon the said inmate, after not less than thirty days from the date of such order, the operation of vasectomy if a male or of salpingectomy if a female; provided that nothing in this act shall be construed to authorize the operation of castration nor the removal of sound organs from the body.

3. From any order so entered by the said special board the said superintendent or the said inmate or his committee or guardian or parent or next friend shall within thirty days after the date of such order have an appeal of right to the circuit court of the county or city in which the said institution is situated, which appeal may be taken by giving notice thereof in writing to any member of the said special board and to the other parties to the said proceeding, whereupon the said superintendent shall forthwith cause a copy of the petition, notice, evidence and orders of the said special board certified by the chairman or in his absence by any other member thereof, to the clerk of the said circuit court, who shall file the same and docket the appeal to be heard and determined by the said court as soon thereafter as may be practicable.

The said circuit court in determining such appeal may consider the record of the proceedings before the said special board, including the evidence therein appearing together with such other legal evidence as the said court may consider pertinent and proper that may be offered to the said court by any party to the appeal.

Upon such appeal the said circuit court may affirm, revise or reverse the orders of the said special board appealed from and may enter such order as it deems just and right and which it shall certify to the said special board of directors.

The pendency of such appeal shall stay proceeding under the order of the special board until the appeal be determined.

4. Any party to such appeal in the circuit court may within ninety days after the date of the final order therein, apply for an appeal to the supreme court of appeals, which may grant or refuse such appeal and shall have jurisdiction to hear and determine the

same upon the record of trial in the circuit court and to enter such order as it may find that the circuit court should have entered.

The pendency of an appeal in the supreme court of appeals shall operate as a stay of proceedings under any orders of the special board or of the circuit court until the appeal be determined by the said supreme court of appeals.

5. Neither any of said superintendents nor any other person legally participating in the execution of the provisions of this act shall be liable either civilly or criminally on account of said participation.

6. Nothing in this act shall be construed so as to prevent the medical or surgical treatment for sound therapeutic reasons of any person in this State, by a physician or surgeon licensed by this State, which treatment may incidentally involve the nullification or destruction of the reproductive functions.

Acts of Assembly, 1924, pp. 569, 570, 571.